

Application No. 10/773,549
Responsive to Office action of May 4, 2005

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§1.143, Applicant makes a provisional election of the invention of the apparatus **Claims 1 – 15 and 19 – 26 of Group I for examination on the merits.**

b. Non-Elected Claims Withdrawn Subject to Reinstatement

Pursuant to 37 C.F.R. §1.142(b), the non-elected method **Claims 16 – 18 of Group II** are withdrawn from consideration, subject however to reinstatement in the event the Restriction Requirement is withdrawn or overruled.

ARGUMENT

a. Reason for Traverse by Applicant

In the Office Action, the Examiner states that the inventions of **Group I** and **Group II** are related as process of making and process of using the product and that the use as claimed cannot be practiced with a materially different product. Therefore, since the product is not allowable, restriction is proper between the method of making and the method of using (MPEP § 806.05(i)).

The Applicant respectfully disagrees with the Examiners characterization of the claims of **Group I** and **Group II** as being categorized as product, process of making, and process of using as set forth in MPEP § 806.05(i). First, MPEP § 806.05(i) is worded in the conjunctive and requires the Examiner to find claims to all three categories in order for restriction to be proper. As stated in MPEP § 806.05(i), "Where an application contains claims to a product, claims to a process specially adapted for ... making the product, and claims to a process of using the product ... applicant may be required to elect either (A) the product and process of making it; or (B) the process of using." However, a careful review of **Claims 1 – 15 and 19 – 26 of Group I** clearly shows that those claims are directed to an apparatus only. On the other hand, **Claims 16 – 18 of Group II** are directed to a method of making only. Consequently, the

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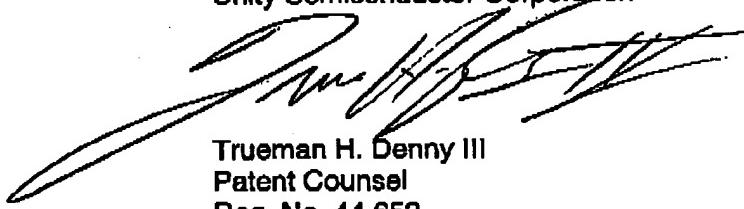
requirement that claims to a process of using is not met because the present application does not include claims to a process of using. Accordingly, there can be no election of either "(A) the product and process of making it" or "(B) the process of using" since no claims are presently directed towards "(B) the process of using."

Therefore, restriction is not proper in accordance with MPEP § 806.05(I) and the restriction requirement ought to now be withdrawn and Claims 16 – 18 of Group II should be examined on the merits along with Claims 1 – 15 and 19 – 26 of Group I.

CONCLUSION

Applicant respectfully requests reconsideration and withdrawal of the Restriction Requirement mailed on May 04, 2005. Should the Examiner believe that a telephone conference would expedite the prosecution of this application the undersigned can be reached at (408) 737-7200 x124.

Respectfully submitted,
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